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June 9, 2020

VIA ECF

The Honorable Stuart M. Bernstein
United States Bankruptcy Judge
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: Picard v. Estate of Allen Meisels, Adv. Pro. No. 10-04428 and *Picard v. Estate of Seymour Epstein*, Adv. Pro. No. 10-04438

Dear Judge Bernstein:

We are counsel to Irving H. Picard, trustee (the “Trustee”) for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff (“Madoff”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III. We write to advise Your Honor of the status of two pending adversary proceedings:

- *Picard v. Estate of Allen Meisels*, Adv. Pro. No. 10-04428 (the “Meisels Action”); and
- *Picard v. Estate of Seymour Epstein*, Adv. Pro. No. 10-04438 (the “Epstein Action,” and together with the Meisels Action, the “Actions”).

Discovery closed in both Actions on December 16, 2019. On February 7, 2020, defendants in the Meisels Action filed a motion to withdraw the reference arguing this Court lacked equitable jurisdiction to determine the Trustee’s claims because defendants maintained their right to a jury trial. Meisels Action, ECF No. 92. On February 14, 2020, defendants in the Epstein Action filed a nearly identical motion to withdraw the reference. Epstein Action, ECF No. 95. The Actions were assigned to District Judge Gregory H. Woods in district court. As no claims were filed in the Actions, the Trustee intended to consent to withdrawal of the automatic reference to the bankruptcy court.

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On February 14, 2020, the Trustee filed a letter consenting to withdrawal of the reference and indicating the Trustee's intent to file a motion for summary judgment. *Picard v. Estate of Allen Meisels*, No. 20-cv-1278 (S.D.N.Y. Feb. 14, 2020), ECF No. 5. On March 2, 2020, Judge Woods withdrew the reference to the bankruptcy court and directed the Trustee to file a request for a pre-motion conference by March 15, 2020. Orders, *Meisels*, No. 20-cv-1278 (S.D.N.Y. Mar. 2, 2020), ECF Nos. 9–10. On March 5, 2020, the Trustee requested a pre-motion conference. *Meisels*, No. 20-cv-1278 (S.D.N.Y. Mar. 2, 2020), ECF No 12. Judge Woods granted the Trustee's request on March 5, 2020, scheduling a pre-motion conference for March 9, 2020. *Meisels*, No. 20-cv-1278 (S.D.N.Y. Mar. 2, 2020), ECF No. 13. Following the March 9, 2020 pre-motion conference, on June 8, 2020, Judge Woods referred the Meisels Action to this Court for proposed findings of fact and conclusions of law on the Trustee's proposed motion for summary judgment. Order, *Meisels*, No. 20-cv-1278 (S.D.N.Y. June 8, 2020), ECF No. 17 (attached as Exhibit A).

Meanwhile, the Epstein Action progressed on a similar, abbreviated track in district court. On March 6, 2020, defendants in the Epstein Action filed a letter indicating the Trustee's consent to withdrawal of the reference. *Picard v. Estate of Seymour Epstein*, No. 29-cv-1377 (S.D.N.Y. Mar. 6, 2020), ECF No. 5. On June 8, 2020, Judge Woods declined to withdraw the reference and instead referred the Epstein Action to this Court for proposed findings of fact and conclusions of law on the Trustee's proposed motion for summary judgment. Order, *Epstein*, No. 29-cv-1377 (S.D.N.Y. June 8, 2020), ECF No. 8 (attached as Exhibit B).

Given Judge Woods' Orders in the Actions, the Trustee requests the Court schedule the Actions for a Rule 7056-1(a) pre-motion conference on July 29, 2020.

Respectfully submitted,

/s/ Nicholas J. Cremona

Nicholas J. Cremona
Partner

Enclosures

cc: (via email)
Helen Davis Chaitman